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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/630,307	07/30/2003	Joel M. WasDyke	1001.1681101	9064
28075 7590 09/15/2009 CROMPTON, SEAGER & TUFTE, LLC 1221 NICOLLET AVENUE SUITE 800 MINNEAPOLIS, MN 55403-2420				
EXAMINER				
BUL VY Q				
ART UNIT		PAPER NUMBER		
3773				
MAIL DATE		DELIVERY MODE		
09/15/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/630,307

Applicant(s)

WASDYKE, JOEL M.

Examiner

Vy Q. Bui

Art Unit

3773

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 June 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 13-22, 24, 31 and 33-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 13-22, 24, 31 and 33-36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/06)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

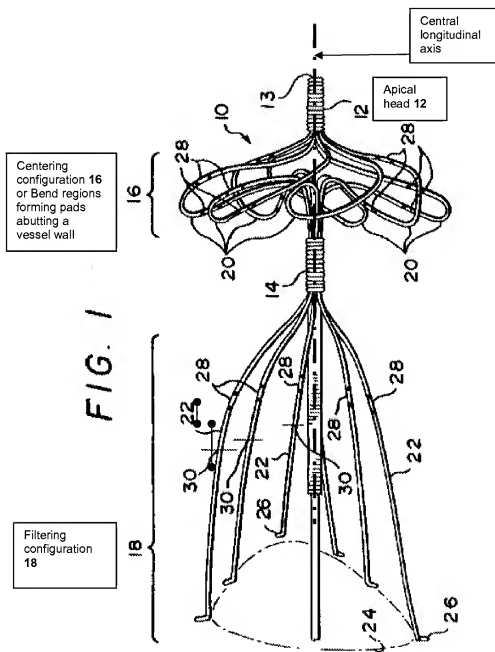
The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 13-17, 19-21, 24, 31, 33-36 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Kleshinski-5,776,162.

As to claims 13-17, 19-21, 24, 31, 33-36, Kleshinski-'162 (Fig. 1; C 1, L 24-43; claims 1-4) discloses filter device 10 made of a shape memory/ nitinol/ super-elastic material having legs 20/22, apical head 12, means for attachment/hooks 26 (Fig. 1) and bends of each legs 20 in region 16 in the proximal section forming a pad to abut the vessel wall (Fig. 1). Legs 20/22 of the device may be brought substantially against one another in a sheath for introduction (, and they expand out inside the vein when the filter is pushed out of the sheath. The elastic deformation of the legs 20/22 with respect to the head 12 is such that, when the filter 10 is implanted, each legs 20/22 abuts on the inner wall of the vessel at regions 16 and 18 (reproduced Fig. 1, below). Notice that from Fig. 1 below, the bend region of legs 20/22. Inherently, legs 20/22 are symmetrically or substantially disposed equidistantly apart from one another in a lumen of a blood vessel to conform to the lumen of the blood vessel and distribute the applied forces on the vessel wall evenly.

Alternatively, it would have been obvious to one of ordinary skill in the art to arrange legs 20/22 equidistantly 60-degree apart in to substantially evenly conform to a lumen of a blood vessel and evenly distribute the applied force of legs 20/22 on the vessel wall.

Art Unit: 3773



Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kleshinski-5,776,162 in view of Boylan et al-6,602,272.

Kleshinski-162 discloses substantially the claimed invention, except for the shape memory material of the device is a nickel-titanium-cobalt alloy. However, Boylan-272 (claims 8 and 21) discloses a blood filter device comprising a Ni-Ti-Cobalt alloy. It would have been obvious to one of ordinary skill in the art at the time of the invention to make a filter as taught by Lefebvre-5,108,418 in view of Simon-4,425,908 of a Ni-Ti-Cobalt alloy as this material is well known and proper for making a blood filter device as taught by Boylan et al-6,602,272.

2. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lefebvre-5,108,418 as applied to claim 13 above in view of Mazzocchi et al.-6,949,103.

Lefebvre-5,108,418 discloses substantially the claimed invention, except for the lubricious coating of the device. However, Mazzocchi-103 (col. 12, lines 7-22) discloses that it is well known to have a lubricious coating to control thrombogenicity of a blood filter. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide a lubricious coating for the Simon-908 blood filter device as recited in the claims for this

Art Unit: 3773

configuration is well known in the art for controlling the thrombogenicity of the blood filter device.

Response to Arguments

Applicant's arguments with respect to the rejected claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vy Q. Bui whose telephone number is 571-272-4692. The examiner can normally be reached on Monday-Tuesday and Thursday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jackie Ho can be reached on 571-272-4696. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Vy Q. Bui/

Primary Examiner, Art Unit 3773